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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,735	05/23/2001	Naishin Seki	JA9-2000-0085 (8728-516)	9928
46069 7590 06/05/2007 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797			EXAMINER O'CONNOR, GERALD J	
			ART UNIT 3627	PAPER NUMBER
			MAIL DATE 06/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/863,735

Applicant(s)

Seki et al.

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on December 15, 2006 (Amdt).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, and 20-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on May 23, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Preliminary Remarks***

1. This Office action responds to the amendment and arguments filed by applicant on December 15, 2006 in reply to the previous Office action on the merits, mailed May 8, 2006.
2. The amendment of claims 1-3 and 5-8, cancellation of claims 10-19, and addition of claims 20-25 by applicant in the reply filed December 15, 2006 are hereby acknowledged.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-8, and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 2001/0014868), in view of Kaminsky et al. (US 2001/0047308).

Herz et al. shows, in Figure 1, a system for the automatic determination of customized prices and promotions. The primary functions of the system for the automatic determination of customized prices and promotions (price setting means) 100 are (1) to identify offers that are

appropriate for each shopper, (2) to help the shopper become informed about these available offers (product information provision means), and (3) to facilitate any or all of the necessary transactions, such as electronic ordering or payment (retail means), if the shopper decides to accept an offer. Demographic and/or consumer information about the shopper or similar shoppers is obtained from other databases, e.g., from a consumer database purchased from a credit-card company, or a database that correlates the response to telemarketing campaigns with demographic variables. The main computer selects offers from the offer database that are likely to result in profitable sales (price trend means, basic rule of supply and demand). "Retail sales state" and means for managing it, as vaguely defined in applicant's specification, is shown throughout the reference in demand curves and more specifically on page 32, paragraph 301, which states, "Time series methods are also useful for detecting trends; one could do a linear regression on sales for a certain product over time, determining the overall direction of a product's sales. This information could be used to adjust offer-generating strategies, as it would indicate a waxing or waning of a customer's overall interest in a given product." But, while the price may be reset and changed with time in the system of Herz et al., it is not specifically disclosed that the pricing is set dynamically, at the time the user looks at it, and it is not disclosed that any trend information regarding the pricing is displayed to the user.

However, Kaminsky et al. disclose a similar system, which system indeed includes that the price is set dynamically (see, for example, ¶ 20) and that the price trend information is displayed to the user (see, for example, ¶ 35 and Figure 3).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Herz et al. so as to set the price dynamically and to display the price trend information to the user, both in accordance with the teachings of Kaminsky et al., in order to generate more sales by urging the buyer to act quickly by giving the sense that the offer being made was a good deal that would not last for long.

Regarding ranking the popularity or evaluations of the products, while the pricing in both Herz et al. and Kaminsky et al. can be set based on the popularity of the items, neither reference specifically discloses ranking the items based on popularity or evaluations of the products. However, ranking items on the basis of their popularity or evaluations, then setting a price based on the ranking, is a well known, hence obvious, element of functionality to include in a list of products for sale, and official notice to that effect is hereby taken. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the system of Herz et al. so as to rank the items for sale in order of their popularity or evaluations, and set the price in accordance with the rank, as is well known to do, in order to generate more revenue by charging higher prices for the better products, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

*Response to Arguments*

5. Applicant's arguments filed December 15, 2006 have been fully considered but they are not deemed persuasive.

6. The arguments regarding the previous prior art rejections have been considered, but have been rendered moot by applicant's amendment, and the consequent new grounds of rejection.

*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to the disclosure.

8. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

Official replies to this Office action may now be submitted electronically by registered users of the EFS-Web system. Information on EFS-Web tools is available on the Internet at: <http://www.uspto.gov/ebc/portal/tools.htm>. An EFS-Web Quick-Start Guide is available at: <http://www.uspto.gov/ebc/portal/efs/quick-start.pdf>.

Alternatively, official replies to this Office action may still be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies should be directed to the central fax at (571) 273-8300.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

May 25, 2007



5/25/07

Gerald J. O'Connor  
Primary Examiner  
Group Art Unit 3627